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The Application of:) Examiner: Azizul Q. CHOUDHURY
Kiran Gurudutt BELLARE et al.)
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Serial No.: 09/728,724)
) Confirmation No.: 5312
Filed: December 1, 2000)
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For: METHODS AND SYSTEMS FOR RULE- BASED DISTRIBUTED AND PERSONAL- IZED CONTENT DELIVERY) Total Pages: 43
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Atty. Docket No.: ORCL5672) <u>APPEAL BRIEF</u>
)

CERTIFICATE OF EXPRESS MAIL PURSUANT TO 37 C.F.R. §1.10

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Sirs:

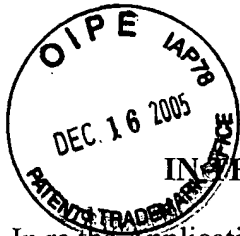
The present Appeal Brief appeals the final Office Action mailed May 16, 2005, and is submitted herewith pursuant to MPEP §1205.02. Accordingly, the Table of Contents may be found beginning on the following page.

The Director is hereby authorized to charge the fees due herewith under 37 C.F.R. §41.20(b)(2), Fee Code 1402, in the amount of \$500.00, to Deposit Account No. 15-0635, referencing Docket No. OID-2000-022-01. A duplicate copy of this sheet is attached.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Kiran Gurudutt BELLARE et al.

Serial No.: 09/728,724

Filed: December 1, 2000

For: **METHODS AND SYSTEMS FOR RULE-BASED DISTRIBUTED AND PERSONALIZED CONTENT DELIVERY**

Atty. Docket No.: ORCL5672

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) **APPEAL BRIEF**

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I. REAL PARTY IN INTEREST

The real party in interest is Oracle International Corporation; a corporation that is organized under the laws of the state of California and that has its principal place of business at 500 Oracle Parkway, Redwood Shores CA 94065. The real party in interest, Oracle International Corporation, obtained the entire right, title and interest in and to the present patent application by virtue of an Assignment from Oracle Corporation, executed on February 18, 2003, and recorded in the United States Patent and Trademark Office on March 4, 2003, at reel/frame 013808/0035. Oracle Corporation obtained the entire right, title and interest in and to the present application by virtue of an Assignment from the inventors executed on November 27, 2000, and recorded in the United States Patent and Trademark Office on December 1, 2000, at reel/frame 011348/0099.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Each of claims 1 - 20 and 24 - 44 stands rejected.

IV. STATUS OF AMENDMENTS

No amendments were filed or entered after the final Office Action mailed May 16, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Fig. 1 is a representation of methods and systems for rule-based distributed and personalized content delivery. Reference numeral 140 represents a merchant server that is coupled to an affiliate server 130 via a computer network 150. The organization controlling the affiliate server 130 may have a relationship or agreement with the organization that controls the merchant server 140 such that the affiliate server 130 is to cause personalized content to be displayed on its Web site(s), the content being personalized by the merchant server 140. The merchant server 140 has access to a database 142 of user information and to a rule base that includes a plurality of rules.

In operation, a computer 120 may access the affiliate server 130 by accessing the affiliate server 130's Web site, as shown at 102. The affiliate server 130 (or a process running thereon) may then collect selected user identification data from the accessing computer 120. The user identification data collected from the accessing computer 120 by the affiliate server 130 may then be sent by the affiliate server 130 to the merchant Web server 140, as shown at 104. Along with the collected user identification data, the affiliate server 130 may send the merchant Web server 140 a request for content. Preferably, the request for content is a request for content that has some relevance to the user of the computer 120 and thus to the user identification data collected from the accessing computer 120. That is, the request for content is a request for personalized content, based at least in part upon the user identification data collected from the accessing computer 120.

The merchant Web server 140 may then access the database of user information 142 as shown at 106 to retrieve user information therefrom that corresponds to, somehow matches or is mapped to the collected user identification data. The user information database 142 may include

user profile information including, for example, demographic information, payment instruments, prior purchases and/or other information such as Web sites visited, Web browser used and/or any other information automatically collected from the user and/or solicited from and provided by the user of the accessing computer 120. The user information stored in the user information database 142 may be mapped to a specifically identified user, or may be mapped to a specific class of customers or users.

The user information retrieved from the user information database 142 that corresponds to the collected user identification data may then be applied to a rule base 144 that includes a plurality of rules, as shown at 108. The rules may be fully customizable to achieve virtually any business goal, such as to carry out targeted advertising, to carry out an advertising campaign or for purposes wholly unrelated to advertising. A rule engine 146 may also be provided, thereby enabling the merchant (the business or organization that owns and/or controls the merchant Web server 140) and/or other duly authorized parties to cancel, modify and/or create new rules at will. The combination of the user information database, the rule base 144 and the rules engine 146 allows the creation of focused advertising campaigns that may be delimited according to any parameter collected from and/or derived from the user information retrieved from the user information database 142. The effectiveness of an advertising campaign may, therefore, be continuously monitored and the rules governing the distribution of the content may be periodically modified to achieve the desired response rate. Indeed, the user information retrieved from the user information database 142 may be applied to one or more of the plurality of rules in the rule base 144. Based upon the result of applying the retrieved user information to the rule base 144, selected content may be returned to the affiliate Web server 130 as shown at 110. The returned content may be selected by the merchant Web server 140 based upon the result of the

application of the user information retrieved from the user information database 142 to the plurality of rules of the rule base 144. The affiliate Web server 130 may then integrate the returned content into its Web site for viewing by the user of the accessing computer 120, or may send the returned content directly to the accessing computer 120 as shown at 112, whereupon the browser running on the accessing computer 120 integrates the returned content into the Web page that is currently displayed or that is to be displayed. Alternatively, the merchant server 140 may send the selected content referenced by the affiliate Web server 130 directly to the accessing computer 120, whereupon the selected content is integrated into the currently viewed Web page.

The user identification information may be stored in one or more files stored on the accessing computer 120. For example, the user information may be stored in (e.g.) a cookie stored on the accessing computer 120. Preferably, at least one of the rules of the rule base 144 may provide for the eventuality of an anonymous cookie or no cookie at all.

Fig. 2 is a representation of the method and systems for rule-based personalized content delivery according to the present invention, wherein the assembly of the Web page to be viewed by the user is carried out at the affiliate Web server 130. From the affiliate Web server 130's point of view, the user's computer 120 accesses the affiliate 130's Web site, as shown at 201. Prior to sending the requested Web page to the browser on the accessing computer 120, the affiliate Web server 130 collects the user information from the accessing computer 120, which user information may be stored in the accessing computer 120 (as a cookie, for example). The affiliate Web server 130 may then send the collected user identification data to a marketing engine 160 coupled thereto as shown at 202. The marketing engine 160 may include the merchant server 140, the database of user information 142 and the rule base 144. Along with the collected user identification data, the affiliate Web server 130 may send an (e.g.) http request for

personalized content to the marketing engine 160. The merchant Web server 140 of the marketing engine 160 may then receive the collected user identification data and the request for personalized content, request and obtain user information corresponding to the received user identification data from the database 142 as shown at 203 and apply the user information from the user information database 142 to one or more of the plurality of rules stored in the rule base 144, as shown at 204. Based upon the result thereof, the merchant Web server 140 may select or may be provided with selected content to be posted in the Web page requested by the accessing computer 120 and sends the selected content (either the content itself, such as html code, or an address or pointer thereto) to the affiliate Web server 130, as shown at 205. The affiliate Web server 130 then dynamically integrates the selected content (after having received it from the merchant Web server 140 or fetched it from the address supplied by the merchant Web server 140) into the requested Web page, as shown at 206. The requested Web page, along with the selected personalized content posted therein, may then be pushed at 207 to the accessing computer 120, to be displayed by the browser. This approach has the advantage of not relying upon any specific feature in the browser or rendering application running on the accessing computer 120, and relies upon the affiliate Web server 130 to integrate the selected personalized content into their Web page.

Fig. 3 is a representation of methods and systems for rule-based personalized content delivery wherein the assembly of the Web page to be viewed by the user is carried out by the computer 120 accessing the affiliate's Web server 130. The user's computer 120 accesses the affiliate server 130's Web site, as shown at 301. The affiliate Web server 130 may then deliver a static Web page to the accessing computer 120, or may dynamically generate a Web page and send the dynamically generated Web page to the accessing computer 120. Whether static or

dynamically generated, the Web page delivered to the accessing computer 120 may include code that calls, as shown at 303, the marketing engine 160 to request personalized content, the call preferably including user identification data read from the accessing computer 120. The marketing engine 160 may include the merchant server 140, the database of user information 142 and the rule base 144. The merchant Web server 140 of the marketing engine 160 receives the collected user identification data and the (e.g., http) request for personalized content, requests and obtains user information corresponding to the received user identification data from the database 142, as shown at 304, and applies the obtained user information to one or more of the plurality of rules stored in the rule base 144, as shown at 305. Based upon the result of the application of the user information to the rules of the rule base 144, the merchant Web server 140 selects content to be posted in the Web page requested by the accessing computer 120 and sends the selected content (either the content itself, such as html code, or an address or pointer thereto) to the browser of the accessing computer 120, as shown by arrow 306. The browser of the accessing computer 120 may then include the content into the currently displayed Web page. The approach has the advantage of having the ability to personalize content to be displayed in a Web page of an affiliate without placing any further processing burdens upon the affiliate Web server 130.

The applicability of the rules of the rule base 144 may be based upon one or more parameters, including time, geography, age, sex, income level, browser type and record of past purchases or inquiries, for example. Values for such parameters may be retrieved, for example, from a profile (stored in the database 142) of the user identified by the user identification data collected from the accessing computer 120. The database of user information 142 may also be

updated by the merchant or a third party based upon the (online) activity of the user of the accessing computer 120.

The following will detail the claimed subject matter, referring to the specification by page and line numbers and to the Figures by reference numbers.

Independent Claim 1

The method of claim is a method for a first server (e.g., **a merchant server, see reference numeral 140 in Fig. 1**) to select content to be displayed on a computer (e.g., **see accessing computer 120 of Fig. 1**) accessing a Web site of a second server (e.g., **see affiliate server 130 of Fig. 1**), **as described beginning at page 7 of the specification**. The claimed method may include steps of collecting user identification data from the computer accessing the Web site, **(see specification, beginning at page 8, line 5)**. The collected user identification data may then be sent to the first server **(see Fig. 1 and specification, beginning at page 8, line 7)**. User information corresponding to the user identification data may then be retrieved from a database of user information accessible to the first server **(See reference numbers 106, 142 in Fig. 1 and specification, beginning at page 8, line 19)**. The retrieved user information may then be applied to a rule base including a plurality of rules **(See reference numerals 144 and 146 in Fig. 1 and specification, beginning at page 9, line 6)**. Content to be displayed on the second server's Web site may then be selected based upon a result of the application of the retrieved user information to at least one of the plurality of rules **(see reference numeral 110 in Fig. 1 and specification beginning page 9, line 7)**. The Web site may then be caused to display the selected content to the accessing computer **(see beginning at page 10, line 11 of the specification)**.

Dependent Claims 2, 36

Dependent claims 2 and 36 recite that at least one of the plurality of rules is customizable, as described in the **specification at page 9 lines 8-11**.

Dependent Claims 3, 4, 19, 20 and 37, 38

Dependent claims 3, 4, 19, 20, 37 and 38 recite that the user identification data is included in at least one file stored on the accessing computer, as described on **page 13, lines 2-6 of the specification**. Therein, one example of such a file is given as a cookie (“Whether static or dynamically generated, the Web page delivered to the accessing computer 120 may include code (such as html code, for example) that calls, a shown at 303, the marketing engine 160 to request personalized content, the call preferably including user identification data read from a cookie stored on the accessing computer 120.”).

Dependent Claims 5, 6 and 7

Dependent claim 5 recites that the causing step of independent claim 1 includes a step of sending the selected content to the second server. Dependent claim 6 recites that the second server further carries out a step of integrating the selected content into the Web site displayed to the user, whereas dependent claims 7 and 23 recites that the second server further carries out a step of transmitting the selected content to the accessing computer and wherein a browser running on the accessing computer integrates the selected content into a currently displayed page of the Web site. This subject matter is **shown in Fig. 1 and is described in the specification page 10, lines 7-20**.

Dependent Claims 8, 24 and 39

As described in the **specification at page 4, line 8**, the transmitting step may be carried out via HTTP and TCP/IP.

Dependent Claims 9, 10, 11, 25, 26 and 27

Dependent claims 9, 10, 11, 25, 26 and 27 recite that the causing step includes a step of sending to the second server an address of the selected content, that the second server carries out a step of fetching the selected content at the address sent by the first server and integrating the fetched selected content into a currently displayed page of the Web site, and that the second server sends the address of the selected content to the accessing computer. The accessing computer then fetches the selected content at the address sent by the second server and integrates the fetched selected content into a currently displayed page of the Web site. This subject matter is described in the **specification at page 12, lines 5-18 and is shown in Fig. 3**.

Dependent Claims 12, 13, 28, 29, 40 and 41

Dependent claims 12, 13, 28, 29, 40 and 41 recite that the content recited in independent claim 1 may include an advertisement, a product recommendation and/or a link to another Web site, or a combination of the product recommendation and a deep link into the other Web site where the recommended product is featured. This subject matter is **described in the specification at page 14, lines 3-7**.

Dependent Claims 14, 15, 30, 31, 42 and 43

Dependent claims 14, 15, 30, 31, 42 and 43 recite that applicability of at least one of the plurality of rules of the rule base is selectively limited by at least one parameter, and that the parameters may include, for example, time, date, geography, age, sex, income level, browser

type and record of past purchases or inquiries. This subject matter is described in the specification at page 9, line 6 to page 10, line 20 and page 14, lines 8-14.

Dependent Claims 16, 32 and 44

Dependent claims 16, 32 and 44 recite that the database of user information may be updated based upon an activity of a user of the accessing computer, as **described at page 4, lines 21-22 of the specification.**

Dependent Claim 17

Dependent claim 17 recites that the sending step sends a request for the selected content along with the collected user identification data, as described in the specification at page 11, line 15-23.

Independent Claim 18

Independent claim 18 defines a system that comprises a merchant Web server (see **reference numeral 140 in Figs. 1, 2 and 3**), an affiliate Web server (see **reference numeral 130 in Figs. 1, 2 and 3**), the affiliate Web server being coupled to the merchant Web server over a computer network (see **numeral 150 in Fig. 1**). A database of user information (**reference numeral 124 in the figures**) is then recited to be accessible to the merchant Web server. A rule base including a plurality of configurable rules (**reference numerals 144, 146 in Figs. 1, 2 and 3**) is then claimed to be accessible to the merchant Web server, as **described beginning at page 8, line 19**. Independent claim 18 then calls for a first process to collect a user identification from a computer accessing a Web site controlled by the affiliate Web server (see **specification, beginning at page 8, line 5**) and for sending the collected user identification to the merchant Web server along with a request for content (see **Fig. 1 and specification, beginning at page 8,**

line 7). A second process is then recited for retrieving user information from the database corresponding to the collected user identification (**See reference numbers 106, 142 in Fig. 1 and specification, beginning at page 8, line 19**). Thereafter, a third process is recited for applying user information obtained from the database to the plurality of rules (**See reference numerals 144 and 146 in Fig. 1 and specification, beginning at page 9, line 6**) and for returning selected content to the affiliate Web server in response to the request for content (**see reference numeral 110 in Fig. 1 and specification beginning page 9, line 7**), the returned content being selected based upon a result of applying the user information to the plurality of rules (**see page 10, lines 7-8 of the specification**). A fourth process is then recited to integrate the selected content into the Web site controlled by the affiliate server (**See specification page 10, lines 7-20**).

Dependent Claim 33

Dependent claim 33 recites that the first process also collects, from the accessing computer, a request for the selected content along with the collected user identification data, as described in the **specification at page 8, lines 7-18 and page 11, line 21 to page 12, line 5**.

Dependent Claim 34

Dependent claim 34 calls for the system of independent claim 1 to include a rules engine configured to enable each of the plurality of rules to be customized and configured to enable a creation of new rules. This subject matter is described in the **specification at page 9, lines 14-19 and reference numeral 146 in Fig. 1**.

Independent Claim 35

Independent claim 35 is a method of delivering personalized content from a first server (e.g., a merchant server, see reference numeral 140 in Fig. 1) to a computer (e.g., see accessing computer 120 of Fig. 1) accessing a second server (e.g., see affiliate server 130 of Fig. 1), as described beginning at page 7 of the specification. The method includes steps of receiving a request for the personalized content from the accessing computer, the accessing computer having accessed a Web page that includes embedded code configured to send the request for personalized content to the first server over a computer network along with selected user identification data, as shown in Fig. 1 and described in the specification beginning at page 8, lines 8-18. Thereafter, the claimed method calls for retrieving user information corresponding to at least one of the user identification data and the accessed Web page from a database of user information accessible to the first server, as described beginning at page 8, line 21. The retrieved user information is then recited to be applied to a rule base including a plurality of rules, as described beginning at page 9, line 6. Content may the be selected to be posted in the accessed Web page based upon a result of the application of the retrieved user information to at least one of the plurality of rules, as described in the specification page 12, line 5 *et seq.* Lastly, independent claim 35 calls for at least one of the selected content and an address of the selected content being sent to the accessing computer for posting into the accessed Web page. This subject matter is described in the specification beginning at page 12, line 13.

VI. GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-20 and 23-44 are anticipated under 35 USC §102(e) under Hagan et al.,
US patent 6,734,886 B1.

VII. ARGUMENTS

Rejections under 35 U.S.C. §102(e) over Hogan et al.

Independent Claim 1:

a method for a first server to select content to be displayed on a computer accessing a Web site of a second server.

Therefore, the claimed invention is a method that requires: 1) a first server that selects content; 2) a second server having (hosting) a web site that displays the selected content; and 3) a computer that accesses the web site of the second server. In contrast, Hagan et al. simply shows a web server 54 and a user computer 90 that accesses the web site of the web server 54. A Registration Authority Server 82 is also shown, but such registration server 82 does not select content to be displayed on the user's computer accessing the web site of the web server 54. The Registration Authority Server 82 of Hogan et al. is only used for authentication purposes – to assign and validate UAI's (Universal Anonymous Identifiers), and is not disclosed to select content to be displayed on the user's computer accessing the web site of the web server 54.

The claimed method for a first server to select content to be displayed on a computer accessing a Web site of a second server recites steps of:

collecting user identification data from the computer accessing the Web site;
sending the collected user identification data to the first server;
retrieving user information corresponding to the user identification data from a database of user information accessible to the first server;
applying the retrieved user information to a rule base including a plurality of rules;
selecting content to be displayed on the second server's Web site based upon a result of the application of the retrieved user information to at least one of the plurality of rules, and
causing the Web site to display the selected content to the accessing computer.

However, the Office supports its §102(e) rejection of this claim by stating that “Hagan discloses a design allowing users to enter their information which is stored within a database remote to the user (column 6, lines 14-30, Hagan). The user information is then used by a web site when the user views the website, and the website is customized based on the user information (Column 4, lines 28-46, Hagan).” As the claimed rules are wholly absent in Hogan et al., the Office resorts to the use of inherency and states that the claimed rules are inherently present in Hagan et al. The Board is respectfully urged to consider the arguments below relative to the use of inherency in framing an anticipation rejection.

However, undisclosed and unsuggested in Hagan et al. are any teachings of a first server selecting content to be displayed on a second server’s web site and causing the Web site to display the selected content to the accessing computer. Again, the claimed method requires three computers:

1. the claimed first server (e.g., the Merchant Server 140 of Fig. 1);
2. the claimed second server (e.g., the Affiliate server 130 of Fig. 1), and
3. the claimed accessing computer (e.g., 120 in Fig. 1).

Moreover the first server must receive the user identification data, retrieve user information corresponding to this data, apply this information to a rule base, select content to be displayed on the **second server’s web site**, and cause the web site to display the selected content to the **accessing computer**. In contrast, in Hagan et al., the web server authenticates the user (Fig. 5) and the same web server provides customized information to the user based upon a keyword search (Fig. 7), based upon a link table (Fig. 8) or based upon the browsing history of similarly situated users (Fig. 8) – neither figures teach or suggest obtaining the customized content from a merchant server coupled to a rule base. There is no disclosure or suggestion in

Hagan et al. of one server selecting content for another web server to display on a web site that is displayed by yet another computer in the manner shown, described and claimed in the present application.

Throughout the final Office Action, the Office relies upon the Registration Authority Server 82 of Hogan et al. as teaching the claimed selecting step that selects content based upon a result of the application of the retrieved user information to at least one of the plurality of rules, as claimed. See, for example, final Office Action, page 3, lines 14-20, page 9, lines 14-20 and page 15, lines 4-11. However, Hogan et al.'s Registration Authority Server 82 does nothing of the sort, as discussed in detail in Hogan et al., at Col. 7, line 49 to Col. 8, line 7:

At the same time the magnetic tape is mailed to the Operator, a second magnetic tape is sent to a trusted third party called a Registration Authority. This second tape will contain, for each User, identified eligibility data with the health plan ID, the surrogate ID, and patient identifying data. The Registration Authority does not receive any clinical data. The Registration Authority does, however, maintain detailed identifying data, enriched with third party tools and databases to support its mission of assigning only a single UAI to an individual throughout that individual's life. Once again, the magnetic tape method is used for security means, but any method of data transfer may be used.

Once the data is received by the Registration Authority and uploaded to its server 82, a unique UAI, which will typically be a unique alphanumeric string, is created and assigned to each User by the Registration Authority server 82. If a UAI had been previously assigned to a User, then that previously assigned UAI will be used. Once a UAI is assigned to a User by the Registration Authority, the UAI never changes. Thus, a User may easily migrate across health plans without an interruption in service since the UAI is generated by the Registration Authority and not the Health Plan. The Registration Authority server 82 contains tools and services 84 to facilitate cross plan User identification. The identified non-clinical data received from the Health Plan is stored in its database 86 indexed by UAI.

Recall that claim 1 is a method for a first server to select content. The Registration Authority Server 82 of Hogan et al., therefore, cannot be said to carry out the claimed steps. The Registration Authority Server 82 issues UAIs that are used to verify eligibility with the medical plan and contains tools and services to facilitate cross plan User Identification. Moreover, the UAIs issued by the Registration Authority Server 82, once issued to a patient, never change.

Given the role of the Registration Authority Server 82 (it only issues and manages UAIs, as per Hogan et al.'s own description), the Office's attempt to graft thereon the steps of claim 1 are in error. In particular, the Registration Authority Server 82 cannot receive the user identification data, retrieve user information corresponding to this data, apply this information to a rule base, select content to be displayed on the **second server's web site**, and cause the web site to display the selected content to the **accessing computer**. The registration Authority Server 82 simply issues UAIs (that never change), and does select content to be displayed on another server's web site, nor does such a Registration Authority Server 82 cause any web site to display the selected content on an accessing computer, as required by the claims.

The anticipation rejection of claim 1 and of its dependent claims, therefore, should be reconsidered and reversed. The same is, therefore, respectfully requested.

Independent Claim 18

What the Office describes as anticipating the claimed invention is a system in which a user enters information in a database, which information is later accessed and used to customize the web site they view. See, e.g., page 9 of the outstanding final Office Action. However, such an interpretation of claim 18 ignores the claim language and the recited steps of claim 18. As the Board is well aware, in a rejection under 35 U.S.C. §102(e), each and every claimed element must be present in the applied reference. In the present case, therefore, Hagan et al. must show each claimed step or it cannot be said to anticipate claim 18.

Claim 18 recites:

**A system comprising:
a merchant Web server;
an affiliate Web server, the affiliate Web server being coupled to the
merchant Web server over a computer network;**

a database of user information accessible to the merchant Web server;
a rule base including a plurality of configurable rules, the rule base being accessible to the merchant Web server;
a first process to collect a user identification from a computer accessing a Web site controlled by the affiliate Web server and for sending the collected user identification to the merchant Web server along with a request for content;
a second process for retrieving user information from the database corresponding to the collected user identification, and
a third process for applying user information obtained from the database to the plurality of rules and for returning selected content to the affiliate Web server in response to the request for content, the returned content being selected based upon a result of applying the user information to the plurality of rules.

In support of the anticipation rejection, the Office only contends that Hagan et al. “discloses a design allowing users to enter their information which is stored within a database remote to the user”, and asserts that a database is a server with storage means and that Hagan et al.’s database 86 is, in fact, a server (“the database ... is a server such as the claimed affiliate server”). At the outset, if Hagan et al.’s database (any one of warehouses or databases 81, 86 or 88) is the affiliate server (an assertion with which Applicants vehemently disagree), where in Hagan et al. is the claimed merchant server? Alternatively, if the claimed database is the affiliate server, where in Hagan et al. is the database 81, 86 or 88 shown to be “accessible to the merchant Web server”, as required by the claim? The answer is that Hagan et al. teaches nothing of the sort. In Hagan et al., there is but a single server (reference number 54 in Fig. 4) that is involved in the generation of the customized web site that is accessed by the user’s computer. Again, Hagan et al.’s “Registration Authority Server” 82 is only used to issue/manage UAI’s and to verify the user’s current Health Plan. To anticipate the claim, Hagan et al. must show each of:

1. a Merchant server;
2. an Affiliate server;
3. a database accessible to the Merchant server;
4. the claimed rule base, and

5. each of the first through third processes that operate upon the claimed Merchant Server, the claimed Affiliate server, the claimed database and the claimed rule base in the manner recited.

In his case, Hagan et al. does not disclose any first process “to collect a user identification from a computer accessing a Web site controlled by the affiliate Web server and for sending the collected user identification to the merchant Web server along with a request for content”. If Hagan et al.’s web server 54 is analogized to the claimed affiliate server, then Hagan et al.’s Registration Authority Server 82 must be the claimed merchant Web server. However, Hagan et al.’s server 82 is not a web server, but merely a server that generates and manages UAI’s. If, on the other hand, Hagan et al.’s Registration Authority Server 82 is analogized to the claimed affiliate server (which it clearly is not), Hagan et al. would still fail to anticipate the claim, as the claimed first process requires the collection of user identification “from a computer accessing a Web site controlled by the affiliate Web server”, and Hagan et al.’s Registration Authority Server 82 does not control any Web site, as required by the claim.

It is also respectfully submitted that the Office is not free to combine two separately recited and distinct (and mischaracterized) elements into a single element for the purpose of making a §102 rejection. In this case, the Office contends that the recitations drawn to the database and affiliate server are met by a database, although both Hagan et al. and the present application shows these elements to be functionally separate entities. The applied reference must show or describe each claimed element in order to anticipate a claim. Hagan et al. does not do this, as demonstrated above. Reconsideration and withdrawal of the 35 USC §102(e) rejection applied to claim 18 and its dependent claims are, therefore, respectfully requested.

Independent Claim 35

A method of delivering personalized content from a first server to a computer accessing a second server, comprising the steps of:

receiving a request for the personalized content from the accessing computer, the accessing computer having accessed a Web page that includes embedded code configured to send the request for personalized content to the first server over a computer network along with selected user identification data;

retrieving user information corresponding to at least one of the user identification data and the accessed Web page from a database of user information accessible to the first server;

applying the retrieved user information to a rule base including a plurality of rules;

selecting content to be posted in the accessed Web page based upon a result of the application of the retrieved user information to at least one of the plurality of rules, and

sending at least one of the selected content and an address of the selected content to the accessing computer for posting into the accessed Web page.

The Office rejected claim 35 on exactly the same grounds as were advanced relative to independent claim 1 – even though the language of each claim is different. The embodiment of claim 35 specifies that the content selected by the first server is posted into the accessed Web page controlled by the second server. In Hagan et al., however, only the Web Server 54 generates Web pages. The Registration Authority Server 82 is only used for authentication and verifying Health Plan membership, and not for selecting content “for posting into the accessed Web page”, as required by claim 35. Moreover, Hagan et al.’s Figs. 6, 7, 8 and 9 set out explicitly how his Web site is customized. Not a single one of these flowcharts or the corresponding written portion of Hagan et al.’s disclosure makes any mention or suggestion of “applying the retrieved user information to a rule base including a plurality of rules; selecting content to be posted in the accessed Web page based upon a result of the application of the retrieved user information to at least one of the plurality of rules, and sending at least one of the selected content and an address of the selected content to the accessing computer for posting into the accessed Web page.” as claimed in claim 35. In contrast, in Hagan et al., the web server authenticates the user (Fig. 5)

and the same web server provides customized information to the user based upon a keyword search (Fig. 7), based upon a link table (Fig. 8) or based upon the browsing history of similarly situated users (Fig. 8) – neither figures teach or suggest obtaining the customized content from a merchant server coupled to a rule base. In Hagan et al., there is no mention of rules, nor any mention of selecting content to be posted in a Web page based upon one or more of these rules, nor any mention or suggestion of sending the selected content and/or the address of the selected content to the accessing computer for posting into the accessed Web page, as required by claim 35. The dearth of teachings or suggestions in Hagan et al. regarding any of these claimed elements is fatal to the Office's §102(e) rejection, several times over.

Dependent Claims 2, 36.

Claims 2 and 36 recite that at least one of the plurality of rules is customizable. Hagan, as noted above in the arguments relative to inherency, does not teach or remotely suggest any step of selecting content to be displayed on the second server's Web site based upon a result of the application of the retrieved user information to at least one of the plurality of rules, as claimed. As Hagan et al. do not teach any rules to which retrieved user information may be applied to select content to be displayed on a Web site, it cannot, by definition, teach that such rules are customizable, as required by claims 2 and 36. The Office's anticipatory rejections of claims 2 and 36 are, therefore, in error and should be reversed.

VIII. ARGUMENTS COMMON TO INDEPENDENT CLAIMS 1, 18 AND 35

Designs Having Features

In the “Response to Arguments” section of the Final Office Action from which the present Appeal is taken, the Examiner asserts, on page 18, lines 7-10 that:

The applicant’s claimed design features two servers. The claimed design features a first server to collect data from the user and a second server providing the user a personalized webpage using the data collected by the first user. The Hagan design...

At the outset, the claimed embodiments are not some vague “designs” that the Examiner is free to re-define, nor may they be summarily characterized as “featuring” two servers, without more. Nowhere in the applicable law in Title 35, United States Code, the implementing regulations in 37 CFR or in the Office’s own examining guidelines in the MPEP, is there any support for examining a utility application by disregarding the language of the claims and summarizing the claimed embodiments as “designs” having “features”. The claim language defines the inventions sought to be patented and the claims are the only allowed metric for evaluating the inventions sought to be patented against the prior art.

The “Spirit” of the “Design” and Attaining a “Full Understanding” Thereof

The Office compounds its legal error when it states, on the bottom of page 18 that:

While each of the claimed elements is not literally present within the Hagan prior art, it is essential for one to not only take into account the literal interpretation of the design. The spirit of the design must also be taken into account and only then will a full understanding of the design be attained.

It is respectfully submitted that, if each claimed element is admittedly not present within the Hagan et al. prior art, the claims cannot be anticipated by the Hagan et al. reference, by definition. Moreover, it is incorrect and unnecessary to channel the “spirit” of the “design” – an examination of the claim language will do. It is respectfully requested that the Office apply the

correct legal standard under §102, and not rely on some legally incorrect and mystical “spirit” of the “design” in an attempt to “attain” a “full understanding” thereof.

Inherency

Specifically regarding the claimed rules in each of the independent claims, the Office relies on *inherency* as a basis for rejecting the claims. The Examiner’s reliance upon inherency is misplaced, in error and does not conform with the USPTO’s own standards concerning inherency.

The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. “The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness.” In re Napier, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983).

Section 2112 of the MPEP (from which the passage above was taken) defines the standards to be followed by USPTO Examiners when formulating rejections based on inherency and clearly defines the Examiner’s burden of proof. Each of the MPEP §2112 standards for inherency will now be addressed in turn.

***Something Which Is Old Does Not Become Patentable Upon The Discovery Of A New Property:* The claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).**

In the present case, however, no “**new property**” is claimed. What is claimed, on the other hand, is **structure and claimed method steps**, namely methods and systems for delivering personalized content from a first server to a computer accessing a second server. Moreover, the pending claims do not recite a “new use, new function or unknown property” that is inherently present in the prior art. Indeed, structure (e.g., rule base, merchant server, etc.) that is not

disclosed in the cited reference cannot be said to have a property, use or function – new or otherwise.

A Rejection Under 35 U.S.C. 102/103 Can Be Made When The Prior Art Product Seems To Be Identical Except That The Prior Art Is Silent As To An Inherent Characteristic: Where applicant claims a composition in terms of a function, property or characteristic and the composition of the prior art is the same as that of the claim but the function is not explicitly disclosed by the reference, the examiner may make a rejection under both 35 U.S.C. 102 and 103, expressed as a 102/103 rejection. “There is nothing inconsistent in concurrent rejections for obviousness under 35 U.S.C. 103 and for anticipation under 35 U.S.C. 102.” In re Best, 562 F.2d 1252, 1255 n.4, 195 USPQ 430, 433 n.4 (CCPA 1977). This same rationale should also apply to product, apparatus, and process claims claimed in terms of function, property or characteristic. Therefore, 35 U.S.C. 102/103 rejection is appropriate for these types of claims as well as for composition claims.

In the present case, however, the claims do not recite the system in terms of function, property or characteristic, but in terms of structure. Moreover, the Hagan et al. reference is not “silent” as to the structure of an otherwise disclosed rule base, because no such rule base is disclosed and no rules are taught or suggested at all. The claims of the present invention, on the other hand, positively recite a plurality of rules, a rule base accessible to a merchant server and also recite selecting content for posting into the accessed web page based upon the application of user information to one or more of the plurality of rules. Nothing of the sort is taught or in any way “inherent” in Hagan et al. For a proper inherency rejection, the structure of the cited reference must be the same as that of the claimed invention and the differences between the cited reference and the claimed invention must be related to some property, use or characteristic that is inherent in the structure of the device disclosed in the cited reference. This is not the case here, in which the Hagan et al. reference nowhere discloses or suggests the claimed structure.

The MPEP continues:

Examiner Must Provide Rationale Or Evidence Tending To Show Inherency: The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957

(Fed. Cir. 1993)(reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981).

To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ “ *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)(citations omitted)(The claims were drawn to a disposable diaper having three fastening elements. The reference disclosed two fastening elements that could perform the same function as the three fastening elements in the claims. The court construed the claims to require three separate elements and held that the reference did not disclose a separate third fastening element, either expressly or inherently.).” (Emphasis Added).

The situation here is even further removed from the facts in the *In re Robertson* case cited in the MPEP above, in that the Hagan et al. demonstrably fails to expressly or inherently disclose an the claimed rules, rule base, affiliate and merchant servers and the structure and functional interplay between these elements, as claimed herein. Hagan et al. does not teach or suggest any rules or any rule base and does not teach the claimed affiliate and merchant web server configured as claimed. The Office’s dependence upon inherency, therefore, is misplaced, as *In Re Robertson* teaches us that the applied reference must at least teach each of the claimed elements, and must teach that such elements are configured to perform the same function as the claimed elements. The computer system of Hagan et al. does not perform the same function as the claimed elements of the pending claims, as noted above. It is further submitted that the Examiner has presented no evidence tending to show that persons of skill in this art would necessarily recognize the Hagan et al.’s system as having any of the functionality or structure claimed. The MPEP continues:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

The Examiner, in this case, has failed to provide such a basis in fact and/or technical reasoning to support his contention that the allegedly inherent rules necessarily flow from the teachings of Hagan et al. The Office's reasoning that "customizations are made based on a user and are different for each user" only defines the term "customization", but provides no rational, or basis in fact or technical reasoning. Again, the rejected claims do not recite an inherent characteristic or structure of the Hagan et al.'s method or system, but structure, processes and steps that are nowhere disclosed or suggested therein.

Section 2112.02 of the MPEP provides detailed guidance relative to inherency and process (method) claims:

2112.02 Process Claims

PROCESS CLAIMS - PRIOR ART DEVICE ANTICIPATES A CLAIMED PROCESS IF THE DEVICE CARRIES OUT THE PROCESS DURING NORMAL OPERATION

Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986) (The claims were directed to a method of enhancing color effects produced by ambient light through a process of absorption and reflection of the light off a coated substrate. A prior art reference to *Donley* disclosed a glass substrate coated with silver and metal oxide 200-800 angstroms thick. While Donley disclosed using the coated substrate to produce architectural colors, the absorption and reflection mechanisms of the claimed process were not disclosed. However, King's specification disclosed using a coated substrate of Donley's structure for use in his process. The Federal Circuit upheld the Board's finding that "Donley inherently performs the function disclosed in the method claims on appeal when that device is used in 'normal and usual operation' " and found that a *prima facie* case of anticipation was made out. *Id.* at 138, 801 F.2d at 1326. It was up to applicant to prove that Donley's structure would not perform the claimed method when placed in ambient light.). See also *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977) (Applicant claimed a process for preparing a hydrolytically-stable zeolitic aluminosilicate which included a step of "cooling the steam zeolite ... at a rate sufficiently rapid that the cooled zeolite exhibits a X-ray diffraction pattern" All the process limitations were expressly disclosed by a U.S. patent to Hansford except the cooling step. The court stated that any sample of Hansford's zeolite would necessarily be cooled to facilitate subsequent handling. Therefore, a *prima facie* case under 35 U.S.C. 102/ 103 was made. Applicant had failed to introduce any evidence comparing X-ray diffraction patterns

showing a difference in cooling rate between the claimed process and that of Hansford or any data showing that the process of Hansford would result in a product with a different X-ray diffraction. Either type of evidence would have rebutted the *prima facie* case under 35 U.S.C. 102. A further analysis would be necessary to determine if the process was unobvious under 35 U.S.C. 103.); *Ex parte Novitski*, 26 USPQ2d 1389 (Bd. Pat. App. & Inter. 1993) (The Board rejected a claim directed to a method for protecting a plant from plant pathogenic nematodes by inoculating the plant with a nematode inhibiting strain of *P. cepacia*. A U.S. patent to *Dart* disclosed inoculation using *P. cepacia* type Wisconsin 526 bacteria for protecting the plant from fungal disease. Dart was silent as to nematode inhibition but the Board concluded that nematode inhibition was an inherent property of the bacteria. The Board noted that applicant had stated in the specification that Wisconsin 526 possesses an 18% nematode inhibition rating.).

In this case, it has been shown above that Hagan et al.'s system is not "the same as a device described in the specification for carrying out the claimed method", as the PTO's own guidelines require. Therefore, it cannot "be assumed the device will inherently perform the claimed process." During its "normal and usual operation", Hagan et al. does not teach any merchant server that accesses a rule base or access a plurality of rules that are then used to select content that is sent to an affiliate server for posting into a web page accessed by yet another computer, as claimed herein. To assert otherwise, it is respectfully submitted, is to read structure and functionality in Hagan et al. that is not present therein.

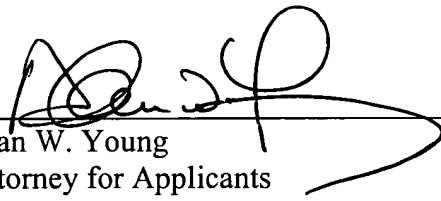
Again, it is the properties or functions of a claimed apparatus that may be held to be inherent in an applied reference, when the product disclosed in the applied reference and the claimed invention are the same. When the claimed invention is a process (method claim), the "same device" must still be disclosed in the prior art and such same device must carry out the claimed process during its "normal and usual operation." Such has not been shown in Hagan et al. These deficiencies are believed to render the Examiner's inherency argument fatally defective, again by the USPTO's own standards. It is respectfully submitted that inherency may not be used to circumvent the strict requirements of 35 USC §102, in which each and every claimed structure or process step must be present in a single reference.

Applicants' attorney, therefore, respectfully submits to the Board that the outstanding Final Rejections of the claims are in error, that all claims are allowable and that the present application in condition for immediate allowance and passage to issue. The Commissioner is authorized to charge any fees which may be required to Deposit Account No. 15-0635, referencing Docket No. OID-2000-022-01.

An oral hearing is not requested.

Respectfully submitted,

Date: Dec. 16, 2005

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IX. CLAIMS APPENDIX

1. **(Original)** A method for a first server to select content to be displayed on a computer accessing a Web site of a second server, comprising the steps of:

collecting user identification data from the computer accessing the Web site;

sending the collected user identification data to the first server;

retrieving user information corresponding to the user identification data from a database of user information accessible to the first server;

applying the retrieved user information to a rule base including a plurality of rules;

selecting content to be displayed on the second server's Web site based upon a result of the application of the retrieved user information to at least one of the plurality of rules, and

causing the Web site to display the selected content to the accessing computer.

2. **(Original)** The method of claim 1, wherein at least one of the plurality of rules is customizable.

3. **(Original)** The method of claim 1, wherein the user identification data is included in at least one file stored on the accessing computer.

4. **(Original)** The method of claim 3, wherein the at least one file is configured as a cookie.

5. **(Original)** The method of claim 1, wherein the causing step includes a step of sending the selected content to the second server.

6. **(Original)** The method of claim 5, wherein the second server further carries out a step of integrating the selected content into the Web site displayed to the user.

7. **(Original)** The method of claim 5, wherein the second server further carries out a step of transmitting the selected content to the accessing computer and wherein a browser running on the accessing computer integrates the selected content into a currently displayed page of the Web site.

8. **(Original)** The method of claim 7 wherein the transmitting step is carried out via HTTP and TCP/IP.

9. **(Original)** The method of claim 1, wherein the causing step includes a step of sending to the second server an address of the selected content.

10. **(Original)** The method of claim 9, wherein the second server carries out a step of fetching the selected content at the address sent by the first server and integrating the fetched selected content into a currently displayed page of the Web site.

11. **(Original)** The method of claim 9, wherein the second server sends the address of the selected content to the accessing computer and wherein the accessing computer fetches the selected content at the address sent by the second server and integrates the fetched selected content into a currently displayed page of the Web site.

12. **(Original)** The method of claim 1, wherein the content includes at least one of an advertisement, a product recommendation and a link to another Web site.

13. **(Original)** The method of claim 12, wherein the selected content includes a combination of the product recommendation and a deep link into said another Web site where the recommended product is featured.

14. **(Original)** The method of claim 1, wherein an applicability of at least one of the plurality of rules of the rule base is selectively limited by at least one parameter.

15. **(Original)** The method of claim 14, wherein the at least one parameter includes time, date, geography, age, sex, income level, browser type and record of past purchases or inquiries.

16. **(Original)** The method of claim 1, further comprising the step of updating the database of user information based upon an activity of a user of the accessing computer.

17. **(Original)** The method of claim 1, wherein the sending step sends a request for the selected content along with the collected user identification data.

18. **(Previously Presented)** A system comprising:

- a merchant Web server;
- an affiliate Web server, the affiliate Web server being coupled to the merchant Web server over a computer network;
- a database of user information accessible to the merchant Web server;
- a rule base including a plurality of configurable rules, the rule base being accessible to the merchant Web server;
- a first process to collect a user identification from a computer accessing a Web site controlled by the affiliate Web server and for sending the collected user identification to the merchant Web server along with a request for content;
- a second process for retrieving user information from the database corresponding to the collected user identification;

a third process for applying user information obtained from the database to the plurality of rules and for returning selected content to the affiliate Web server in response to the request for content, the returned content being selected based upon a result of applying the user information to the plurality of rules, and

a fourth process to integrate the selected content into the Web site controlled by the affiliate server.

19. **(Original)** The system of claim 18, wherein the user identification data is included in at least one file stored on the accessing computer.

20. **(Original)** The system of claim 19, wherein the at least one file is configured as a cookie and wherein the first process is configured to retrieve the cookie from the accessing computer.

21-22. **Canceled)**

23. **(Previously Presented)** The system of claim 18, wherein the affiliate Web server is further configured to transmit the selected content to the accessing computer and wherein a browser running on the accessing computer is configured to integrate the selected content into the Web site displayed to the user.

24. **(Original)** The system of claim 23 wherein the affiliate Web server is configured to transmit the selected content via HTTP and TCP/IP.

25. **(Original)** The system of claim 18, wherein the selected content includes an address of content to be displayed on a Web site controlled by the affiliate Web server.

26. **(Original)** The system of claim 25, wherein the affiliate Web server is further configured to fetch the content at the address sent by the third process and integrating the fetched content into a currently displayed page of the Web site.

27. **(Original)** The system of claim 25, wherein the affiliate Web server is further configured to send the address of the content to the accessing computer and wherein the accessing computer is configured to fetch the content at the address sent by the affiliate Web server and to integrate the fetched content into a currently displayed page of the Web site.

28. **(Original)** The system of claim 18, wherein the selected content includes at least one of an advertisement, a product recommendation and a link to another Web site.

29. **(Original)** The system of claim 28, wherein the selected content includes a combination of the product recommendation and a deep link into said another Web site where the recommended product is featured.

30. **(Original)** The system of claim 18, wherein an applicability of at least one of the plurality of rules of the rule base is selectively limited by at least one parameter.

31. **(Original)** The system of claim 30, wherein the at least one parameter includes time, date, geography, age, sex, income level, browser type and record of past purchases or inquiries.

32. **(Previously Presented)** The system of claim 18, further including a fifth_process to update the database of user information based upon an activity of a user of the accessing computer.

33. **(Original)** The system of claim 18, wherein the first process also collects, from the accessing computer, a request for the selected content along with the collected user identification data.

34. **(Original)** The system of claim 18, further including a rules engine configured to enable each of the plurality of rules to be customized and configured to enable a creation of new rules.

35. **(Original)** A method of delivering personalized content from a first server to a computer accessing a second server, comprising the steps of:

receiving a request for the personalized content from the accessing computer, the accessing computer having accessed a Web page that includes embedded code configured to send the request for personalized content to the first server over a computer network along with selected user identification data;

retrieving user information corresponding to at least one of the user identification data and the accessed Web page from a database of user information accessible to the first server;

applying the retrieved user information to a rule base including a plurality of rules;

selecting content to be posted in the accessed Web page based upon a result of the application of the retrieved user information to at least one of the plurality of rules, and

sending at least one of the selected content and an address of the selected content to the accessing computer for posting into the accessed Web page.

36. **(Original)** The method of claim 35, wherein at least one of the plurality of rules is customizable.

37. **(Original)** The method of claim 35, wherein the user identification data is included in at least one file stored on the accessing computer.

38. **(Original)** The method of claim 37, wherein the at least one file is configured as a cookie and wherein the receiving step receives user identification data collected from the cookie stored on the accessing computer.

39. **(Original)** The method of claim 35, wherein the receiving step is carried out via HTTP and TCP/IP.

40. **(Original)** The method of claim 35, wherein the selected content includes at least one of an advertisement, a product recommendation and a link to another Web site.

41. **(Original)** The method of claim 40, wherein the selected content includes a combination of the product recommendation and a deep link into said another Web site where the recommended product is featured.

42. **(Original)** The method of claim 37, wherein an applicability of at least one of the plurality of rules of the rule base is selectively limited by at least one parameter.

43. **(Original)** The method of claim 42, wherein the at least one parameter includes time, date, geography, age, sex, income level, browser type and record of past purchases or inquiries.

44. **(Original)** The method of claim 37, further comprising the step of updating the database of user information based upon an activity of the accessing computer.

X. **EVIDENCE APPENDIX**

None.

XI. RELATED PROCEEDINGS

None.